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Supreme Court, U.S.
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No. 09-81

IN THE

Supreme Court of the United States

WILLIAMS CONTROLS, INC.,
Petitioner,

v.

BRAULIO M. CUESTA and ERIC L. GOLDEN,
Individually and on Behalf of
All Others Similarly Situated,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Oklahoma

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PETITIONER'S REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Williams Controls, Inc. (WCI), states that the Corporate Disclosure Statement contained in the petition remains accurate.

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PETITIONER'S REPLY BRIEF

In their Brief in Opposition (Br. Opp.), respondents assert that this Court has no jurisdiction over the petition, that this Court should not entertain it on policy grounds, and that the *per se* choice-of-law rule of *Ysbrand v. DaimlerChrysler Corp.*, 81 P.3d 618 (Okla. 2003), is constitutional, as applied in this case. Respondents are wrong on all counts.

I. THIS COURT HAS JURISDICTION.

WCI asserts jurisdiction under 28 U.S.C. §1257(a), which provides, in pertinent part, that "[f]inal judgments or decrees rendered by the highest court of a State . . . may be reviewed by the Supreme Court by writ of certiorari where . . . any . . . right . . . is . . . claimed under the Constitution." 28 U.S.C. §1257(a). Respondents argue that this "final judgment rule" precludes this Court's jurisdiction here. Br. Opp. 12. They are mistaken.

First, while this Court has held that §1257(a) creates a "firm final judgment rule," *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997), this Court has also recognized that "whether a ruling is 'final' . . . is frequently so close a question" that it is "impossible to devise a formula to resolve all marginal cases," *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 152-53 (1964). As such, this Court has declined to enforce the rule in a "mechanical fashion," *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477 (1975), and has, instead, given the finality requirement a "practical rather than a technical construction," *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

This case is final for purposes of §1257(a), because this Court may review decisions in which the highest

court of a State has finally determined a federal issue, even if further state court proceedings may follow. *See Cox Broadcasting*, 420 U.S. at 477; *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 346 (1985). *Cf. Miami Herald Publ'g Co. v. Tornello*, 418 U.S. 241, 246-47 (1974) (finding a state court's interpretation of a state statute to be "final" where it implicated First Amendment freedom-of-the-press rights); *Local No. 438 Constr. & Gen. Laborers' Union v. Curry*, 371 U.S. 542, 548-50 (1963) (finding that where a state court exceeds its jurisdiction in imposing state law on a dispute, the jurisdictional determination is final and appealable under §1257(a)).

Second, *Cox Broadcasting* provides four exceptions to the "rule of finality," the fourth of which applies here. *See* Br. Opp. 13 & n.18. Specifically, review is appropriate when the state court has finally decided a federal issue, the "losing" party may still prevail on non-federal grounds, and reversal of the state court on the federal issue would preclude any further litigation on the related claim, whereas a refusal to review the state court ruling "might seriously erode federal policy." *See Cox Broadcasting*, 420 U.S. at 482-83. All of these prerequisites are met here:

- The Oklahoma Supreme Court has ruled, finally and unequivocally, that Michigan law will govern all class claims against both defendants and that the imposition of Michigan law comports with all relevant constitutional standards.[1]

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[1] Respondents argue that because a class certification order is subject to modification, the Oklahoma ruling cannot be considered "final." Br. Opp. 13. No matter how the trial court may modify the class, however, it cannot "overrule" the Oklahoma

- WCI may still prevail in the underlying litigation on state law grounds.
- Reversal of the decision below would preclude the adjudication of any class claims against WCI under Michigan law and, indeed, might defeat class certification entirely (there being no "common question of law" without the unifying effect of Michigan law).
- A refusal to review the Oklahoma Supreme Court's unconstitutional *per se* rule might seriously erode federal policy with respect to due process and full faith and credit in class action choice-of-law analyses, as embodied in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), and its progeny.

Third, respondents' efforts to extricate themselves from *Cox Broadcasting* are ineffectual. *See* Br. Opp. 13-16. To begin with, *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978), is inapposite, because (a) it predates the amendment of Federal Rule of Civil Procedure 23 to allow discretionary appeals of class certification orders (*see* Fed. R. Civ. P. 23(f)); (b) under Oklahoma law, parties may appeal class action certification decisions as of right (*see* 12 Okla. Stat. §993(6) (2009)); and (c) WCI is not advancing a "public policy" argument, but a constitutional attack on Oklahoma's *per se* class action choice-of-law rule, which has ripple effects beyond this litigation.

Furthermore, respondents' speculation about other possible federal appellate issues is misguided. Argu-

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Supreme Court with respect to the class-wide application of Michigan law. That holding, the constitutionality of which WCI is challenging in the petition, is immutable.

ments made in remand briefing filed four years ago and hypothetical scenarios involving notice and opt-out procedures (Br. Opp. 17) pose no threat of "piecemeal" federal appeals. (Indeed, they do not even reflect real federal issues.) *Flynt v. Ohio*, 451 U.S. 619 (1981), is of no help to respondents, because it was a criminal case, where "finality" occurs only upon conviction and sentence (*id. at* 620-21), and *Flynt* expressly recognizes "finality" where "constitutional policies . . . would have been undermined by the continuation of the litigation in the state courts" (*id.* at 622).

Moreover, concerns regarding "piecemeal" litigation are immaterial where, as here, a delay in review would lead to "the mischief of economic waste and of delayed justice." *Cox Broadcasting*, 420 U.S. at 477-78 (citing *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 1120, 1124 (1945)). The economic waste of class action litigation where a state court unconstitutionally certifies a nationwide class is indisputable, as are the effects on defendants who must await the outcome of potentially ruinous state court class action litigation before obtaining vindication of their constitutional rights.

Finally, respondents claim that reversal of the decision below could still permit either the certification of different classes or the continuation of litigation by the two named plaintiffs. Br. Opp. 18 & n.22. However unlikely, either scenario would preclude any further litigation on the issue raised in the petition, *i.e.*, the unconstitutional application of Michigan law to every class member's claims against WCI. If Oklahoma were to employ a constitutionally valid choice-of-law analysis on remand, no federal "issue" could result. That is all that *Cox Broadcasting* requires.

II. THE ISSUES RAISED IN THE PETITION ARE BOTH IMPORTANT AND ENDURING.

Respondents assert that this case does not merit the Court's attention, because it raises no issues of importance that Congress and the Oklahoma legislature have not already resolved. Respondents are wrong.

First, respondents claim there is no "split" of authority regarding the constitutionality of the Oklahoma *per se* rule. Br. Opp. 20-21. This is a straw man argument, as no other court would have occasion to address such a question. The real "split" is between those States that enforce an individualized choice-of-law analysis—a constitutional imperative under *Shutts*—and Oklahoma, which circumvents it with its *per se* rule. Pet. 15-17. *See, e.g., Barbara's Sales, Inc. v. Intel Corp.*, 879 N.E.2d 910, 921 (Ill. 2007) (flatly contradicting, on constitutional grounds, the holding in *Ysbrand* that "the needs of the interstate system . . . require that the issue . . . be determined in one forum with one result rather than in 51 jurisdictions with the very real possibility of conflicting decisions"); *Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657, 680-81 (Tex. 2004) (noting the constitutional limitations on a choice-of-law analysis, requiring a detailed conflict-of-laws assessment, and finding that non-Texas residents would not be subject to Texas law in a nationwide breach of warranty class action); *Dragon v. Vanguard Indus., Inc.*, 89 P.3d 908, 918 (Kan. 2004) (holding that due process and full faith and credit considerations require contacts between the state, the defendant, and the class members' claims that are "significantly greater in number and quality than the contacts

necessary to provide a court with [personal] jurisdiction over the class members' claims").

Second, in denying the deleterious effects of *Ysbrand*'s *per se* rule, respondents contend that WCI "provides no citation to any [Oklahoma class action] case" that flowed from *Ysbrand*. Br. Opp. 22. The petition itself contains citations to three such cases at the Oklahoma Supreme Court level.[2] Oklahoma has seen a number of other putative nationwide class actions since *Ysbrand*.[3]

Third, respondents argue that both the Class Action Fairness Act and recent Oklahoma tort reform legislation will end nationwide class actions in Oklahoma. Br. Opp. 23. The tort reform claim is overstated and purely speculative.[4] To begin with,

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[2] *See* Pet. 17, citing *Cuesta v. Ford Motor Co.*, 209 P.3d 278 (Okla. 2009); *Masquat v. DaimlerChrysler Corp.*, 195 P.3d 48 (Okla. 2008); *Grider v. Compaq Computer Corp.*, No. CJ-2003-969, 2004 WL 5264946 (Okla. Dist. Ct.), *cert. denied*, 128 U.S. 387 (2007).

[3] *See, e.g., Bayhylle v. Jiffy Lube Int'l, Inc.*, 146 P.3d 856, 858 (Okla. Civ. App. 2006) (confirming nationwide class action settlement); *In re Farmers Ins. Co., Inc., FCRA Litig.*, No. CIV-03-158-F, 2006 WL 1042450 (W.D. Okla. Apr. 13, 2006) (certifying nationwide class action); *Lemmings v. Second Chance Body Armor, Inc.*, Case No. CJ-2004-62, Okla., Mayes County Dist. Ct., Sept. 23, 2005 (entering final judgment on previously certified nationwide class); *General Motors Corp. v. Ford*, 546 U.S. 935 (2005) (denying certiorari as to nationwide product liability class certified by the Oklahoma Court of Civil Appeals). *Cf. Angel v. Goodman Mfg. Co.*, 617 F. Supp. 2d 1120, 1125 n.2 (N.D. Okla. 2008) (citing *Ysbrand* for the choice-of-law rule in a putative nationwide breach of warranty class action), *aff'd*, 2009 WL 1532344 (10th Cir. June 3, 2009).

[4] WCI has already debunked the CAFA assertion. *See* Pet. 13 n.5 (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)); *see also Moody v. Ford Motor Co.*, No. 03 CV 0784-

the class action language is permissive ("[i]n the conduct of actions to which this section applies, the court *may* make appropriate orders") and still allows nonresident members in Oklahoma class actions (where a "significant portion of the nonresident's cause of action aris[es] from conduct occurring within the state"). Oklahoma Comprehensive Lawsuit Reform Act of 2009, 2009 Okla. Sess. Law Serv. Ch. 228, HB 1603, sec. 16, §2023(D)(3) (emphasis added). Thus, the language of the Act is ambiguous with respect to the possible preclusion of nationwide class actions in Oklahoma.

Moreover, the relevant class action provisions have not yet taken effect, and tort reform legislation in this country has long faced legal challenges (including those on constitutional grounds), such that future enforcement of the law—which obviously has no prophylactic effect as to like-minded jurisdictions—is uncertain.

III. OKLAHOMA'S *PER SE* RULE VIOLATES THE CONSTITUTION.

A. The Oklahoma Courts Conducted No Constitutionally Valid Choice-of-Law Analysis.

Even respondents concede that the Constitution imposes limitations on a State's choice-of-law principles. Br. Opp. 24. According to *Shutts*, due process requires an individualized choice-of-law analysis, one in which a trial court must assess the connection

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CVE-PJC, 2006 WL 346433 at *1 (N.D. Okla. Feb. 13, 2006) (citing *Klaxon* and holding that where a conflict of law exists in a diversity action, the federal court must apply the choice-of-law rules of the forum state).

between the law of each State implicated, each defendant, and each putative class member's claims against that defendant, before selecting any applicable law. Pet. 16-17. In making this assessment, the trial court cannot consider the possible existence of a class. *Id.*

In an effort to justify the results of *Ysbrand*'s application in this case, respondents assert that the Oklahoma Supreme Court "reviewed the record" (Br. Opp. 8, 11, 29) and conducted a "seven page choice-of-law analysis" (Br. Opp. 27). Neither assertion is true.[5]

First, there is no evidence that the Oklahoma Supreme Court "reviewed" anything other than the opinions below and the parties' certiorari filings, which were limited to ten pages each and could *not* reach the "merits" of the appeal. Pet. 8 n.3.[6]

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[5] Respondents admit that the trial court did not so much as *cite Shutts*, much less conduct *any* constitutional choice-of-law analysis. *See* Br. Opp. 8 n.17.

[6] In their brief, respondents posit purported "facts" that are not in the record before this Court and are, in any event, irrelevant to the petition. For example, respondents attempt to argue the "merits" of their breach of warranty claims with brief, and misleading, references to an alleged defect ("bracket gap"), an unrelated personal injury case, and NHTSA findings that actually exonerate the pedal assemblies at issue. Br. Opp. 4-6. Respondents do not explain the relevance of these averments to the *constitutional* issues raised in the petition, nor is there any. Indeed, the only allegation even relevant to class certification concerns the "bracket gap defect." But here, respondents mislead, as the Oklahoma Supreme Court recognized when it observed that, contrary to respondents' assertions, Ford engineer Greg West actually testified that the existence of the "gap" was (a) vehicle-to-vehicle dependent (thus defeating "commonality") and (b) irrelevant to the alleged "default to idle"

Second, the Oklahoma Supreme Court's "choice-of-law analysis" was a transparent reaffirmation of the holding in *Ysbrand*, which it found dispositive on the issue. Pet. 5, 8-9. Contrary to *Shutts*, the Oklahoma courts conducted no individualized choice-of-law analysis. Instead, they simply presumed the existence of a class, then assessed the class *as a whole* in the context of only one state (Michigan) and only one defendant (Ford). Pet. 21. WCI was an afterthought, bootstrapped in on the basis of *Ford's* allegedly relevant contacts with Michigan. Pet. 8-9, 21.

B. WCI Has No Constitutionally Relevant Contacts With Michigan.

By respondents' own admission, this class action is constitutionally impermissible unless "WCI's contacts with Michigan gave rise to the class members' claims." Br. Opp. 25. Attempting to concoct such contacts, respondents commit three fatal errors.

First, they overstate WCI's alleged contacts by averring that "WCI made design, manufacturing, and distribution decisions in Michigan." Br. Opp. 29. To support this contention, respondents proffer correspondence that no Oklahoma court ever considered or referenced in any opinion and that, therefore, is not part of the record before this Court. Br. Opp. 29-31. But even if it were, the letters do not support the proposition for which respondents cite them, because (a) none of the letters so much as *implies* that any

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problem. *E.g.*, Pet. App D 89a. No wonder the Oklahoma Court of Civil Appeals commented on the lack foundation for such alleged "facts" by noting that WCI had produced uncontroverted, contrary evidence, which the trial court had simply ignored when granting class certification. *See* Pet. App. B 46a n.8, 56a-57a.

design or production decisions were *made* in Michigan or that any such work *occurred* in Michigan; (b) the letters are truncated to the point of incoherence; and (c) the single reference to a "[Ford] specification" is irrelevant, in light of the class claim that WCI *violated* this specification when its former subsidiaries designed and built the pedals *in Florida*. *See* Pet. 4 n.1.

Moreover, neither the parties nor the Oklahoma courts have ever disputed that WCI's former subsidiaries designed, built, tested, and sold the pedals in Florida (as WCI proved through the *uncontroverted* affidavits of its employees). The Oklahoma courts (and respondents) simply ignored those facts and focused on alleged contacts in Michigan when shoe-horning WCI into *Ysbrand*'s *per se* framework.

Second, even if "WCI" had made "design, manufacturing, and distribution *decisions*" in Michigan, such conduct would be legally irrelevant to the class members' claims against WCI, because:

- The trial court defined the operative "common question" as "whether *the sale* of the vehicles . . . constitutes a breach of express or implied warranty." Pet. 4. But *sales*, which occurred in 51 jurisdictions, are unrelated to the location of earlier design and manufacturing *decisions*.
- There are only two types of "breaches" possible as to WCI: one based on an "un-manifested defect" (in which case, the breach occurred upon sale of the pedals in Florida, Kentucky, and/or Mexico) and one based on a manifested defect (in which case, the breach occurred, if at all, upon manifestation in any or all of the

51 jurisdictions). Pet. 23 n.8. Michigan is only *one* of those 51 jurisdictions and, as such, has no greater interest than any other state.

- Even under Michigan law, WCI's alleged *conduct* is irrelevant in a breach of warranty case; the product itself is the focus of inquiry. *See, e.g., Gregory v. Cincinnati Inc.*, 538 N.W.2d 325, 329 (Mich. 1995) (holding that while a design defect claim tests the conduct of the manufacturer, "[a] breach of warranty claim tests the fitness of the product"). As such, the locus of alleged "decisions" (*i.e.*, conduct) is irrelevant even to a Michigan class member's breach of warranty claim against WCI.

Third, respondents eviscerate their defense of the *Ysbrand* rule when they contend that "Michigan plainly has an interest in regulating WCI's conduct *within Michigan*." Br. Opp. 32 n.26.[7] As to WCI's former subsidiaries, however, the only constitutionally (and legally) relevant conduct occurring in Michigan was the *sale* into Michigan of Ford trucks containing the allegedly defective pedals.

While such sales might give *Michigan* residents a claim against WCI in Michigan, each putative class member can claim the *same interest* in applying the law of that member's home state to his or her claims against WCI, thus implicating the law of each of the 51 jurisdictions where Ford sold the trucks. Not only does this result prove that Michigan has no greater interest than that of any other State in "regulating

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[7] Notably, Michigan does not share respondents' interest in applying Michigan law to nationwide breach of warranty classes. *See* Pet. 22 n.7.

WCI's conduct," it demonstrates clearly the constitutional infirmity of *Ysbrand*'s *per se*, "single-State-choice-of-law" rule in nationwide breach of warranty class action cases.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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